GOVERNMENT OF MYSORE.

LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT (LABOUR)

Labour Dispute.—Industrial Dispute between the Workmen and the Management of consolidated Coffee Estates, (1943) Ltd., Polibetta Post, Coorg District

Award of the Industrial Tribunal, Bangalore published.

Read the following papers:

(i) Letter No. IT. No 1904/66-67 dated 14th November 1966, from Shri A. Panchaksbariah, Presiding Officer, Industrial Tribunal, Bangaloro.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE, BANGALORE.

Dated the 10th November 1966.

Present:

Sri A. Panchaksbariah, B.A. (Hons), LL.B., ... Presiding Officer.

I. D. No. 31 of 1965.

I Party		*II Party.*
Workmen of Consolidated Coffee Estates (1943) Ltd., Polibetta post Coorg District.	*Vs.*	Management of Consolidated Coffee Estates (1943) Ltd, Polibetta Post, Coorg District.

Appearances.

Sri B. R. Dolia, Advocate, Madras-1. ... *For I Party.*

Sri Kuriyan, Advocate, ... *For II Party.*

Reference.

G. O. No. PLM 173 LLD 65, Bangalore, dated 6th August 1965.

AWARD.

The Government of Mysore by their Order No. PLM 173, LLD 65, dated 6th August 1965, have referred under Section 10 (1) (d) of the Industrial Disputes Act, 1947, certain points of dispute existing between the Workmen and Management of Consolidated Coffee Estates (1943) Ltd., Polibetta Post, Coorg District, to this tribunal for adjudication. The points of dispute are with regard to wages for the strike period between 7th August

1964 and 25th October 1964. It appears that in connection with the payment of Bonus for the year 1962/63 also a difference existed between the workmen and the management of the said Estates. The I Party Union represented for the payment of Bonus for the year 1962-63 at various months starting from 4½ months to 8½ months basic salary. The Management resisted this payment and ultimately the matter was referred for adjudication to the special Industrial Tribunal which was constituted by the Government of Mysore, and this Special Industrial Tribunal gave its award on 18th November 1965 which is reported to be the subject matter of an Appeal before the Supreme Court. During the pendency of these adjudication proceedings before the Special Industrial Tribunal, the Union appears to have raised a dispute with regard to the claim of the workers and Staff Members for the period between 7th August 1964 and 25th October 1964 during which period there was a complete strike by the Union.

2. As soon as this Reference was received the same was registered as I. D. No. 31 of 1965 and th parties were called upon to put in their pleadings. The I Party *viz*., the workmen of the Consolidated Coffee Estates (1943) Ltd, Polibetta Post, Coorg District, put in the their claim statement and contended that their claim relates to the period between 7th August 1964 and 25th October 1964 and the wages for this period for the Staff members and the Artizans Since 1953 the Company was making huge profits and even for the year 1962-63 the balance sheet of the company showed that lakh and fifty thousand rupees had been ear marked for payment of bonus to the staff and the artizans. Altogether the company has been employing 153 staff member and 79 Artizans all of whom are monthly rated employees and nearly 90 per cent of these staff members and artizans are members of the Union. In addition to the above staff members and artizans, the company also employes nearly 3,600 labourers who are daily-rated workers.

3. The case of the Union is that in the past, the company used to pay substantial bonus to the staff members ranging from 5½ months basic salary to 9 months basic salary For the year 1960 61 the company shwoed a net profit of Rs. 21.93,000 andpaid 8½ months basic salary by way of bonus to the Staff members and 60 per cent of the same to the artizans. Right from the year when the company started paying bonus to the staff members, the quantum of the same was not determined or ascertained by applying the Labour Appellate Tribunal Formula. However the

quantum was fixed in the beginning by the Company itself and subsequently as a result of the negotiations with the Union it was changed. Even for the payment of bonus for the daily-rated labour the company was not applying the L.A.T. formula for fixing the quantum of bonus. For the year 1962-63 the company showed a net profit of Rs. 50,00,000- and it originally declared payment of bonus at 5 months basic wages for the staff members and at 3 months basic wages for the Artizans. During the course of the conciliation proceedings initiated at the instance of the Union, the company increased the quantum to 5½ months basic wages for the staff members with corresponding increase to the Artizans. Coming to the year in dispute *viz.*, 1962-63, the company had finalised their accounts and had made ready by October 1963. The Union contends that for the year ending November 1963, the company had made good profit and was in a position to pay higher bonus than that in the previous years The Audited Balance Sheet and Profit and Loss Account published by the Company for the year 1962-63 showed a net profit of Rs. 18,19,691-and this was after providing for all the necessary items of expenditure incurred by the company. A sum of Rs. 1, 15,000-was ear-marked for payment of bonus to the members of the staff and artizans. The then Managing Director of the Company agreed with the Union Office-bearers that the Members of the staff would be paid 7 months basic salary by way of bonus and the artizans proportionately. In fact he had even authorised the staff members to inform all members of the staff that the bonus issue has been settled at 7 months basic pay and proportionately to the artizans. I am referring to this in detail because of the various steps adopted by the union as well as the company to come to an amicable settlement with regard to the bonus for the year 1962-63. But curiously enough the company went back on the said negotiated settlement and sent a letter that it was not possible for it to pay a minimum of 7 months basic salary as bonus as requested by the union. This led to the protracted negotiations between the union and the company, and finally conciliation proceedings were held first by the Asst. Labour Commissioner, Chickmagalur, in this behalf. The union was prepared to advise its members to receive the quantum of bonus voluntarily charged and ear-marked by the Management in their Audited Balance Sheet and get the issue in regard to the claim of additional bonus referred to adjudication or arbitration. But the company was not agreeable. The Conciliation Officer sent up a Failure Report on 20th May 1964. Thereafter the Hon' ble Minister for Labour intervened and advised both the parties to get the entire issue

regarding bonus settled through arbitration and this was also not accepted by the Management. The Company, instead of accepting the advise insisted that the staff members should receive the bonus declared by it in full and final settlement of their claims. The Union felt that this was neither reasonable nor justifiable, especially in view of the fact that the company had made huge profits for the year in question. The Union, in the these circumstances, had no other alternative but to issue a strike notice. By the letter dated 26th December 1963 the Union requested the Management to permit the members to draw the bonus provided in the accounts keeping the matter open for negotiations for a final settlement and this was not agreed to by the Company. Even the efforts made by the Hon'ble Labour Minister to get the issue settled through arbitration was not successful because of the stiff attitude adapted by the company. Accordingly the Union issued a strike notice by its letter dated 29th July 1964 and even after issuing the strike notice attempts were made by the Union to have direct talks with the management for a just and reasonable stlement, but the company adopted absolutely negative attitnde and turned a deaf earto this request. Therefore the staff members and the Artizans went on a strike from 7th August 1964 which was most peaceful and orderly throughout its duration. Even during the strike period the General. Secretary of the Union tried to negotiate the matter with the company for a honourable settlement, but he was informed that the union must tender an apology and the staff members should be prepared to receive 3½ months' basic salary in full and final settlement which was nothing but an vindictive attitude taken up by the Company. However, the strike was called of on 24th October 1964 pursuant to the advice of the Hon'ble Labour Minister who promised to constitute a Board of conciliation to investigate into the matter and promote a settlement with regard to the bonus for 1962-63. By its majority report dated 3rd April 1965 the Board of Conciliation which had been constituted, recommended that the staff members and the Artizans are entitled to get aleast 7 months' basic pay as bonus for the year 1962-63 without making any distinction between the staff members and the artizans. Even during the course of the conciliation proceedings the management adopted vindictive attitude, and finally the Government had to appoint a Special Industrial Tribunal and reference had to be made to it with regard to the bonus for 1962-63. The Union contends that the strike was fully justified, legal and peaceful throughout its duration and it was brought about as a result of the adamant

attitude adopted by the company. In the meanwhile the company had paid a few of the staff members the bonus ear-marked by it in the Balance Sheet on their issuing quittance receipts, and this was done only to bring about a hitch between the members of the Union. The Union therefore contends that the strike being lawful and justified, the staff members and the artizans are entitled to full emoluments and benefits for the entire strike period of 80 days from 7th August 1964 to 25th October 1964 with costs of these proceedings.

4. As against this, the Management has filed a lengthy Counter statement denying those allegations which are inconsistent with the one made in the claim statement. According to the Management a large number of employees, both the staff members and Artizans employed by the Company went on a strike from 7th August 1964 to 25th October 1964 in respect of their demand for bonus for 1962-63. Negotiations between the parties had failed and at that time the report of the Conciliation Officer was sent to Government as per the provisions of the Industrial Disputes Act, 1947. The Union, instead of moving the Government for referring the dispute for adjudication, resorted to a strike purely with a view to coerce the Management to effect payment in accordance with their demand. Therefore the Management contends that the strike was thoroughly unjustified. Even during the strike period there was considerable amount of lawlessness and violence and the strike was carried on in a most reprehensible manner. The Management has suffered losses as a result of this strike. A claim like bonus should have been easily settled by adjudication as per the provisions of the Industrial Disputes Act. The Management therefore submits that the strike being unjustified, the staff members and the artizans are not entitled to wages for the period of strike. Regarding the quantum of bonus the management has denied that the bonus paid to the workers was ever more than 5 months basic salary. The rest of the allegations are also denied. So then without going into great detail in the counter statement of the II Party, it can be seen that the contention of the II Party is that the Union is not entitled for the wages for the strike period between 7th August 1964 and 25th October 1964.

5. The two questions that arise for consideration in determining whether the staff members and the artizans are entitled to wages for the strike period between 7th August 1964 and 25th October 1964 are or whether (1) the strike was justified and

(2) whether the strike was peaceful without resorting to voilance. In considering the justifiability of the strike one has to take into account the long list of letters and correspondence that has passed between the Union and the Management as regards to the bonus for the period 1962-63. There are indications to show th.t the Union was not right in resorting to strike without exhausting all the remedies that are op-n to the Union in securing their demands. It looks as though the Union stood more on its rights to vindicate their might than resorting to strike. I may also mention in this connection that the Union had no specific stand to put forward. In one of their letters dated 25th November 1963, the Union has demanded by way of bonus for 1962-63, 9·5 months basic wages and the management has rightly replied on 26th December 1963 that it is not possible to pay even the 7 months basic pay as bonus as requested by the Union. In another letter dated 29th January 1964 addressed by the Secretary Sri Pinto to the Assistant Labour Commissioner, a copy of which has been forwarded to the Management, the Union writes as follows:—

> "The Company has thus unfortunately shaken our belief in direct and amicable settlement and we were forced to settle this matter through agitation and strike."

The tenor of this letter clearly shows that the Union began with a fighting mood. In their letter dated 26th February 1964 the Union has withdrawn all the offers made by it in reference to direct action. Throughout it can be seen from the correspondence that the Management was prepared to refer the matter for adjudication, though of course, the management was against placing this important matter for adjudication. One cannot compel the Management to agree to only arbitration because of various reasons. Firstly that no appeal is provided for or against the decision of the Arbitrators and secondly because the scope by means of writ petition to challenge the order of the Arbitrator would be very much limited. Therefore one cannot expect the management to take this risk. It is strangely to see as to why when the conciliation failed and the failure report was sent to Government, the Union did not request the Government to refer the matter for adjudication by a properly constituted tribunal, and ultimately as it has happened in this case, the matter has been referred for adjudication and the Government had to appoint a Special Industrial Tribunal to go into the question which tribunal gave its award and the matter has been reported to be pending before the Supreme Court. The Union, by its letter dated 25th April 1964, addressed

to the Managing Director, gave no option whatsoever to the Management and by that letter the Union actually threatened the Management that if the demands were not conceded the letter itself may be treated as a final notice after which the Union was entitled to take any step it liked. Even then the management replied by their letter dated 27th April 1964 not to resort to strike but to pursue the matter by means of conciliation and the management also told the Union that the responsibility for this threatened strike would be completely on the Union. Finally the Union appears to have insisted upon the management for agreeing to arbitration as could be seen from the report of the Conciliation Officer, though the Conciliation Officer has recommended for referring the matter for adjudication. Ultimately by its letter dated 28th July 1964 a resolution appears to have been passed at the meeting of the Union wherein several resolutions including the burning of the effigy of the General Manager was decided. The strike notice was given and the strike was actually launched from 7th August 1964 to 25th October 1964. It is in evidence of the witnesses examined by the Management that the strike was nothing but peaceful. The strike appears to have started with the burning of the effigy of the General Manager and then by shouting slogans and by disturbing office work and also by processions every day. It might be that the II Party, *viz.*, the Management did not protest and had they only protested at this, the consequence would have been violence. It is also in evidence that the car of one of the officials was stopped and banged by the Processionists. It might be that it has not resulted in serious violence but still that cannot be justified as being very peaceful. When the conciliation failed and when the conciliation officer sent up his report to the Government, the wisest thing which the union could have done was to have moved the Government to refer the matter for adjudication. Their persistent attitude in getting the matter decided only by means of arbitration was most unreasonable and naturally the Management did not like to take the risk of going to arbitration on an important matter like this. Immediately after the failure report was sent, without waiting for further opportunity, the Union resorted to strike and one of the important means of machinery provided for getting this issue settled, was not adopted by the Union. Under such circumstances it is held by their Lordships of the Supreme Court in 1960 (II) LLJ 243 that where the Union did not exhaust all the remedies before resorting to strike. its members are not entitled to the wages for the strike

period. On account of the hasty action taken by the Union not merely the Union has suffered but also the management. Their Lordships of the Supreme Court have held :—

> "Allowing the appeal by special leave relating to the portion of the award, held that in the circumstances of the instant case, the strike must be held unjustified. The demands were not of such an urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through industrial tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made may well be justified." Their Lordships have further held :—
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> "The concerned workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the Government to make the reference."

Having come to this conclusion their Lordships observe that the workmen should be held not entitled to any wages for the strike period. The situation in this case is almost the same. No doubt, the demand for bonus for the year 1962-63 which was made by the Union, was pending for some time without being settled, but it is nowhere shown by the Union that it was of such an urgent nature that the Union could not have waited for an adjudication over the matter. After all, the matter has been finally referred for adjudication and decided. This is nothing but a hasty and thoughtless action on the part of the Union to have resorted to a strike by which they have not gained anything

at all. Sri Dolia pointed out to me that the justifiability of a strike would be viewed from the stand point of fairness and reasonableness of the demands made by the workmen and not merely from the stand point of their exhausting all other legitimate means open to them for getting the demands fulfilled. It is nowhere said that the demands for bonus for 1962-63 was an unjustifiable claim and even the II Party does nowhere say that it is an unjustifiable demand. But the only thing is that the approach to attain this object has been of an unhelpful attitude. In West Bengal Flour Mills case reported in 1956 X F J.R. 240-L.A.T. it was held that the justification of a strike depends to a large extent upon the fact that all avenues of a fair settlement were tried and failed, but in spite of the conciliatory attitude of the management, the workmen resorted to strike which would be unjustified and that they would not be entitled to wages for the strike period. Again, in Burn and Co's. case reported in 1956 X.F.J.R. 369, the workmen launched a stay-in-strike as a protest against lawful dismissal of a workmen and on appointing a new man in his place. The workmen did not try all the avenues of a settlement. It was held that the strike under such circumstances was unjustified. In Bangalore Silk Throwing Factory's case, two workmen were dismissed and 24 workmen went on a strike demanding reinstatement of the two dismissed workmen. The Government by Notification, made a reference to the Industrial Tribunal in the matter of the dismissal of the two workmen. It was held that under the circumstances of the case the strike was unjustified. When the question as to the legality of the dismissal was referred for adjudication, and that was the proper remedy which the workmen should have sought, they have no valid reason to resort to a strike. The Industrial Tribunal held that the strike resorted to without exhausting all the means of redress was unjustified, *Vide* 1957 (I) LLJ 435. It is thus clear from these rulings and also the rulings which I have referred to in 1960 (II) LLJ 243, that if strike is resorted to without exhausting all the avenues of a reasonable settlement, it must be held to be unjustified and the consequence is that the workers who go on a strike are not entitled to wages for the strike period. In the present case I have pointed out from the correspondence that the Union failed to take up the matter to the Government for making a reference when the conciliation failed. It may be that they have waited for some time to get their demands fulfilled. But a little more waiting would not have very much mattered. The strike launched on 7th August 1964 which lasted till 25th October 1964 cannot therefore

be held to be justified and therefore the workmen, *viz.*, the staff members and the Artizans are not entitled to the wages for the strike period between 7th August 1964 and 25th October 1964.

6. In the rusult I pass the following award, *viz.*, that the staff members and the artizans of the Consolidated Coffee Estates (1943) Ltd., Polibetta Post, Coorg District, are not entitled to wages for the strike period from 7th August 1964 to 25th October 1964. It follows on the latter part of the point of dispute that they are not entitled to any relief.

7. Under the circumstances of the case, each party will bear its own costs.

A. PANCHAKSHARIAH,
Presiding Officer,
Industrial Tribunal.

ORDER.

Bangalore, dated the 23rd November 1966.

S. O. 5863.—WHEREAS by State Government Order No. PLM 173 LLD 65, dated 6th August 1965, the Industrial Dispute between the Workmen and the Management of consolidated coffee Estates (1943) Ltd., Polibetta post, Coorg District was referred to the Industrial Tribunal, Bangalore for adjudication.

AND WHEREAS the Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore, are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 173 LLD 65.]

By Order and in the name of the Governor of Mysore,

1549

G. G. PUROHIT, *Under Secy.*